IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2330 OF 2007

M/s.Percept Integrated Marketing Services Pvt.Ltd. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr.Prashant Naik with Ms.Anuja Jhunjhunuwala & Ms.Neha Chowdhary for Petitioners.

Mr.Mustafa Doctor with Mr.Ranjit Shetty i/b PDS Legal for Respondent No.4.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 6, 2007.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule returnable forthwith. Mr.Doctor waives notice for Respondent No.4, who is the only contesting Respondent. Notice to Respondents 1 to 3 is dispensed with.

3. By consent, Petition is taken up for final

disposal forthwith.

4. This Writ Petition takes exception to the order passed by the Divisional Joint Registrar dated 4th October 2007 in Revision Application No.736 of 2006. The background in which the said proceeding emanated is that the Petitioners who have purchased flat No.2 on the first floor in the building of the Society, filed Appeal under Section 23 of the Maharashtra Cooperative Societies Act, complaining that the Society has refused to admit the Petitioners as member of the Society on untenable grounds. The Appeal was filed on the basis of letter received by the Petitioners dated 12th September 2006 and the letter sent by the Society to the original member of the Society dated 11th September 2006. It appears that formal resolution of refusal to admit the Petitioners as member of the Society on the application preferred by the Petitioners dated 2nd August 2006 came to be passed on 16th September 2006 while the Appeal under Section 23 preferred by the Petitioners was pending. The Appeal came to be decided in favour of the Petitioners on 11th November 2006. The

Appeal Court not only set-aside the letters dated 11th September 2006 and 12th September 2006 referred to in the Appeal but also Resolution dated 16th September 2006 passed by the Society. The Appellate Authority instead directed the Society to admit the Petitioners as member of the Society.

5. The Respondent No.4 Society being dissatisfied, preferred Revision Application before the Divisional Joint Registrar, Co-operative Societies, Mumbai being Revision Application No.736 of 2006. The Revisional Authority preferred to set-aside the order passed by the Appellate Authority but for the first time recorded reasons, which do not find place in the grounds on which the Society has decided to refuse admission to the Petitioners nor those grounds were pressed before the Appellate Court. This is the principal grievance made in the present Petition.

6. On the other hand, Counsel for the Respondent No.4 submits that the Revision Application has been rightly allowed and the final order passed by the Revisional Authority will have

to be upheld although for different reasons. According to the Respondent No.4, the Appellate Authority exceeded its Authority in setting aside the Resolution passed by the Society which was not even made subject matter of challenge in the Appeal. The Appeal was instead filed only questioning the grounds set-out in the communication dated 11th September 2006 and 12th September 2006 respectively, which was not in the nature of decision taken by the Society to refuse admission of the Petitioners. The formal decision was taken by the Society which culminated in the Resolution dated 16th September 2006 which was communicated to the Petitioners subsequently. However, that Resolution was not expressly challenged in the Appeal preferred by the Petitioners. On this basis, it is contended that the Appeal preferred by the Petitioners ought to have failed on this count alone. Besides, Counsel for the Respondent No.4 would contend that there was enough material on record to support the stand of the Respondent No.4 that the final decision taken by the Respondent No.4 not to admit the Petitioners as member of the Society, was warranted

in the fact situation of the present case and those circumstances can be considered as good and just ground for refusal of membership.

7. Having considered the rival submissions and going through the record, in my opinion, the appropriate course is to set-aside the order of the Revisional Authority as well as the Appellate Authority and instead relegate the parties before the Appellate Authority to reconsider the matter afresh on its own merits in accordance with law by permitting the parties to raise all contentions available to them in relation to the grounds already pressed before the Appellate Authority and arising from the decision of the Society replicated in the Resolution dated 16th September 2006. Indeed, the Appellate Authority may be free to permit the parties to file further documents even in support of the grounds already taken by the parties in the said proceedings. The Appellate Authority shall proceed to decide the Appeal afresh on the assumption that the Appeal is directed not only against the two letters sent by the Society dated 11th September 2006 and 12th September 2006

respectively but also against the Resolution of the Society dated 16th September 2006 and consider all the rival contentions in that behalf on merits. This course is acceptable to the Petitioners as well as Respondent No.4.

8. In the circumstances, this Petition is allowed by setting aside the order passed by the Revisional as well as Appellate Authority dated 4th October 2007 and 10th November 2006 respectively and instead, the Appeal under Section 23 of the Act, which was presented by the Petitioners before the Appellate Authority is restored to the file to its original number, to be decided in accordance with the observations made in this order.

9. It is once again made clear that all questions are left open, to be considered on its own merits in accordance with law and this order is passed without prejudice to the rights and contentions of the parties.

10. At the hearing, Counsel for the

Petitioners has made grievance that the Respondent No.4 Society was not complying with the directions issued by the Cooperative Court. That position is disputed by the Counsel for the Respondent No.4 Society. Counsel for the Petitioners insist that undertaking of Respondent No.4 be taken on record that they will abide by the orders passed by the Co-operative Court in future. Needless to observe that the orders passed by the Court are required to be obeyed by the concerned parties. No undertaking in that behalf is necessary to be recorded. In case, the Petitioners are in a position to place on record that the Respondent No.4 Society or its member(s) or any person representing the Society has wilfully disobeyed the orders of the Court, the Petitioners will be at liberty to take recourse to such other remedy as may be permissible by law.

11. Petition disposed of with the above observations.

A.M.KHANWILKAR, J.